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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 594

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Petitioners

v.

ANTONIOS G. STAMPOLIS, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Respondent has said (Answer to Petition, page 8) that "The exceedingly narrow question in this case is whether or not a state can maintain an attachment of the property of a non-resident defendant". The petition presents no such question. The general appli-

cability of foreign attachment statutes, as respondent suggests, has been long settled. We believe that the distinction between general applicability to non-residents and applicability to trustees who are responsible to courts of another jurisdiction is too obvious to require comment. However, it does point up the relative ease with which the court below applied inapplicable precedent to reach its decision that the Pennsylvania Courts had jurisdiction over a claim for a pension from a District of Columbia trust.

Respondent places heavy reliance on the opinion of the Superior Court of Pennsylvania, the decision with respect to which petitioners seek a writ of certiorari. It is respondent's only citation of authority to support jurisdiction.

The opinion in the Superior Court of Pennsylvania (Petition, App. A, pp. 4a-8a) deals with the field of trust law and jurisdiction over *inter vivos* trusts and the trustees of such trusts in a single paragraph (*Ibid,* p. 7a). Judge Ervin there notes the thesis of trust law set forth in Section 299 of the Restatement, Conflict of Laws, namely, that the administration of an *inter vivos* trust of movables is supervised by the courts of that state only in which the administration of the trust is located. That doctrine, plus the precedent of courts both in Pennsylvania and in other jurisdictions adhereing thereto, formed the basis of Judge Kennedy's opinion for the three judge court in the Court of Common Pleas of Allegheny County (Petition, App. A, pp. 1a-4a), an opinion which Judges Gunther and Wright of the Superior Court would have affirmed. The existence of that doctrine is unchallenged.

Judge Ervin's opinion states another proposition of trust law in juxtaposition to that relied upon by Judge Kennedy, namely, "that if a court has jurisdiction of the trust res, it may render a judgment in rem or quasi in rem affecting a non-resident defendant constructively summoned with reference to the res in the court's control but may not render a judgment in personam". The Pennsylvania cases relied upon to support that proposition are not quoted by the respondent (Answer, p. 10) except by parenthetical reference to "Pennsylvania cases in support thereof". Those cases, *In re Heinz's Estate*, 313 Pa. 6, 169 A. 365 (1933) and *Jones* v. *Jones*, 344 Pa. 310, 25 A. 2d 327 (1942), do not support Pennsylvania jurisdiction over a claim to pension benefits from the Fund of which petitioners are trustees.

In re Heinz's Estate, supra, was a suit by the Pennslyvania resident settlor of an *inter vivos* trust against the Pennsylvania trustees to prevent payment to an individual non-resident cestui of accrued and accruing income from a trust corpus located and administered in Pennsylvania. The precise holding was that a proceeding in the court which had jurisdiction of "settlement of accounts of trustees of *inter vivos* trusts" was not a proceeding at law or in equity which would support an interlocutory appeal. However, there was language by way of dicta to indicate that Pennsylvania had jurisdiction both to hear the case and to restrain payment because the Orphan's Court where the case was brought was the court at the situs of the trust having responsibility for the "settlement of accounts". No question of foreign attachment against trustees or a trust was raised.

In *Jones* v. *Jones, supra,* a wife brought suit for maintenance against a deserting non-resident husband and the trustees of two Pennsylvania trusts in which her husband had a vested beneficial future interest. Suits against property in desertion cases were authorized by Pennsylvania statute and service was had personally upon the trustees of both trusts. The court noted and relied on the fact that the administration of the trusts was in Pennsylvania. It said: "The question involved is whether a husband's future interest in trusts administered in Allegheny County are such property interests and have such situs as to give the court jurisdiction". It answered the question by resting its holding upon the dual grounds of trust res plus trust situs. "* * * this Commonwealth has the power, through the presence of the trust res and the administration of the trust res, to subject appellant's interests to satisfaction of claims against him."

There is an analogy to foreign attachment in *Jones* v. *Jones* but it is the analogy of proceedings against property for desertion and procedings against property by foreign attachment for debt. Maintenance was owed and the question was whether property was available which might be used in satisfaction. Trust law was relevant only on the situs of the intangible vested beneficial future interest of the non-resident spouse. The situs of the administration was a necessary ingredient of the finding of situs of the interest. Viewed in this light, the decision supports petitioner's contentions in the present proceeding rather than the Superior Court's conclusion or respondent's argument. The situs of the Fund, the trustees, and moneys available for the pension which respondent seeks are to be found only in the District of Columbia. Just as the vested future

right in *Jones* has its situs only in Pennsylvania, so does respondent's "right" have potential situs only in the District of Columbia. That is the only jurisdiction where his entitlement to an interest in the form of a pension, the ultimate relief requested, should be determined.

Cases which support jurisdiction over a trust at the situs of its administration and the location of the trust res, despite the absence of a non-resident individual cestui, are no support for upholding jurisdiction on the basis of the foreign attachment of funds of a trust administered in another jurisdiction by non-resident trustees. Those cases are free of the Constitutional limitation of due process which arises where the administration of the non-resident trust is already subject to the direction of the court at its situs.

Only in one additional, minor respect do petitioners feel it necessary to reply to respondent's answer. Respondent's assertion on page 3 that "the pension was denied without explanation", and that he had "complied with all the rules and regulations" of the Fund would be categorically controverted if and when the merits of the case are reached. Since the question of jurisdiction was raised preliminarily by petitioners, no answer has yet been filed to the complaint below.

It is respectfully submitted that the petition should be granted.

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February 17, 1959